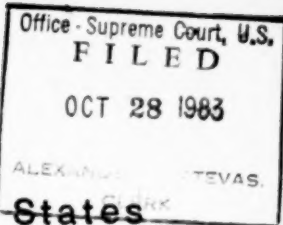


No. 83-549



In the
Supreme Court of the United States

OCTOBER TERM, 1983

MARK ABRAMOFF,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

**RESPONSE TO PETITION
FOR WRIT OF CERTIORARI
TO THE WISCONSIN SUPREME COURT
AND THE WISCONSIN COURT OF APPEALS**

BRONSON C. LA FOLLETTE -
Attorney General
State of Wisconsin

STEPHEN W. KLEINMAIER
Assistant Attorney General

Attorneys for Respondent.

Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
(608) 266-8908

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SUMMARY OF ARGUMENT

In this case, the Wisconsin Court of Appeals merely applied the applicable United States Supreme Court decisions to the facts of this case. The petitioner

has misstated the issue in the case. The Wisconsin Court of Appeals did not find that the petitioner lacked a reasonable expectation of privacy on the ground that he was not present when his car was searched; but rather, the Wisconsin Court of Appeals found that the petitioner lacked a reasonable expectation of privacy because he had surrendered dominion and control over his car to two friends. Because the petitioner has misstated the issue and because the court of appeals merely applied the applicable cases to the facts of this case, this Court should deny the petition for certiorari.



ARGUMENT

BECAUSE THE WISCONSIN COURT OF APPEALS MERELY APPLIED THE APPLICABLE CASES TO THE FACTS OF THIS CASE, THIS IS NOT AN APPROPRIATE CASE FOR THE SUPREME COURT TO ISSUE A WRIT OF CERTIORARI.

In concluding that the petitioner did not have a reasonable expectation of privacy in his car at the time it was searched in Kentucky, the Wisconsin Court of Appeals merely applied the holdings of this Court in Rawlings v. Kentucky, 448 U.S. 98 (1980); United States v. Salvucci, 448 U.S. 83 (1980); and Rakas v. Illinois, 439 U.S. 128 (1978), to the particular facts of this case (see petitioner's appendix A at 2-5). The Wisconsin Court of Appeals concluded that, under these cases and under cases of the Wisconsin Supreme Court that had interpreted the United States Supreme

Court cases, the petitioner did not have a reasonable expectation of privacy in his car because he had surrendered control of his car and its contents to third parties for a substantial time and distance (petitioner's appendix A at 5).

The petitioner misleads the Court when he states that the issue is whether he had standing to challenge a search that was conducted when he was not present (see question presented for review in petition for writ of certiorari). The issue in this case is not whether the owner was present at the time of the search, but rather, whether the owner had control over the vehicle at the time of the search. The Wisconsin Court of Appeals, in finding that the petitioner did not have a reasonable expectation of privacy in the car at the time of the search, did not rely on the

fact that the petitioner was not present at the time of the search; rather, the Wisconsin Court of Appeals relied on the fact that the petitioner had surrendered dominion and control of the car and its contents to third parties for a substantial time and distance (petitioner's appendix A at 4-5). In relying upon the dominion and control factor rather than the mere ownership of the vehicle the Wisconsin Court of Appeals acted consistently with this Court's decisions in Rawlings, 448 U.S. at 105; Salvucci, 448 U.S. at 91-93; and Rakas, 439 U.S. at 149.

Therefore, the issue presented in this case is not the issue stated by the petitioner; i.e., the issue is not whether the petitioner lacked a reasonable expectation of privacy simply because he was not present when the

search was carried out. The issue is whether he lost his reasonable expectation of privacy because he had surrendered dominion and control of the vehicle to third parties.

The petitioner has also misled the Court as to the facts. At page 6 of the petition for writ of certiorari, the petitioner implies that he was charged and convicted of possession of marijuana on the ground that he possessed the marijuana when it was discovered during the search in Kentucky. This is incorrect. The petitioner was convicted of possessing marijuana with intent to deliver on the ground that he possessed the marijuana that was transferred to the jeep he was driving in Wisconsin (petitioner's appendix A at 1-2). Thus, his conviction was not based on the possession of marijuana seized in

Kentucky; but rather, he was convicted of possessing marijuana after it was delivered to him in Wisconsin.

Because the petitioner has misled the Court on the issues of the case and the facts of the case; and because the Wisconsin Court of Appeals merely applied the applicable United States Supreme Court and Wisconsin Supreme Court cases to the facts of this case in which it was found that the petitioner had surrendered dominion and control of his car to third parties, the respondent does not believe that this case is one in which this court should grant a petition for writ of certiorari.

CONCLUSION

For the reasons discussed above, the State of Wisconsin, respondent, requests

this Court to deny the petition for writ
of certiorari.

Respectfully submitted,

BRONSON C. LA FOLLETTE
Attorney General
State of Wisconsin

STEPHEN W. KLEINMAIER
Assistant Attorney General

Attorneys for Respondent.

Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
(608) 266-8908